

Securities and Exchange Commission

§ 201.34

201.1005 Adjustment of civil monetary penalties—2013.

TABLE V TO SUBPART E—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Subpart F—Fair Fund and Disgorgement Plans

- 201.1100 Creation of Fair Fund.
- 201.1101 Submission of plan of distribution; contents of plan.
- 201.1102 Provisions for payment.
- 201.1103 Notice of proposed plan and opportunity for comment by non-parties.
- 201.1104 Order approving, modifying, or disapproving proposed plan.
- 201.1105 Administration of plan.
- 201.1106 Right to challenge.

AUTHORITY: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a-37, and 80b-11; 5 U.S.C. 504(c)(1).

Sections 201.700 and 201.701 are also issued under sec. 916, Pub. L. 111-203, 124 Stat. 1376.

SOURCE: 47 FR 610, Jan. 6, 1982, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the Act* in this subpart B), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications.

[54 FR 53051, Dec. 27, 1989]

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984,

and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

[54 FR 53051, Dec. 27, 1989]

§ 201.33 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are on the record adjudications under 5 U.S.C. 554 in which the position of an Office or Division of the Commission as a party, not including *amicus* participation, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. See appendix, 17 CFR 201.60.

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[47 FR 610, Jan. 6, 1982, as amended at 54 FR 53051, Dec. 27, 1989]

§ 201.34 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

- (1) An individual with a net worth of not more than \$2 million;
- (2) The sole owner of an unincorporated business who has a net worth